



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tabcon, Inc.
File: B-245944
Date: December 20, 1991

Theodore M. Bailey, Esq., for the protester.
James M. Speer, Jr., Esq., for El Paso Key Fitting Company,
an interested party.
John A. Carter, Esq., and Jerold D. Cohen, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Agency acted reasonably in waiving a bidder's failure to
acknowledge an amendment that had no material effect on
price, quality, quantity or delivery.

DECISION

Tabcon, Inc., protests the Army's award of a contract to
install deadbolt locks in family housing at Fort Bliss,
Texas, to El Paso Key Fitting Company. Tabcon contends that
El Paso's bid should have been rejected because El Paso
failed to acknowledge an amendment to the solicitation.

We deny the protest.

The invitation for bids (IFB), No. DABT-91-B-0028,
contemplated a requirements contract to provide all labor,
tools, parts, equipment, materials, facilities and
transportation needed to install the locks. The IFB
included general installation specifications, in lieu of
detailed specifications for each housing unit, and provided
for the work to be ordered incrementally by issuing delivery
orders. The IFB also included a map of Fort Bliss,
identifying housing areas, and encouraged prospective
bidders to visit the site to identify conditions that might
affect the costs of performance. The IFB stated that the
failure to perform a site visit could not provide the basis
for a claim after award.

On August 23, 1991, the Army issued an amendment to the IFB
containing answers to questions asked by prospective
bidders; the amendment established a bid opening date of
September 3. The apparent low bidder had a mistake in its

bid and was allowed to withdraw. El Paso was the next low bidder, but did not acknowledge receipt of the amendment. The contracting officer waived El Paso's omission as a minor informality and awarded it the contract.

Tabcon, the next low bidder, asserts that the waiver of El Paso's failure to acknowledge the amendment was improper. Tabcon contends that the amendment made material changes to the specifications and argues that the amendment therefore had to be acknowledged in order for El Paso's bid to be responsive.

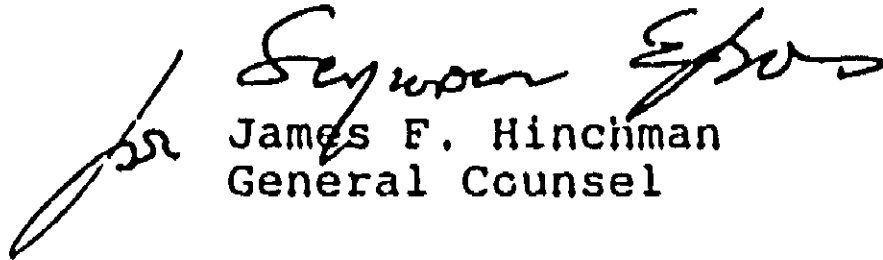
Generally, a bid that does not acknowledge a material amendment must be rejected as nonresponsive, because absent such an acknowledgement acceptance of the bid would not obligate the contractor to comply with the amendment's terms. Gulf Electric Construction Co., Inc., 68 Comp. Gen. 719 (1989), 89-2 CPD ¶ 272. However, an amendment is not material if it does not impose any legal obligations on the bidder different from those in the original solicitation; the failure to acknowledge an amendment that merely clarifies an existing requirement therefore may be waived. See Federal Acquisition Regulation § 14.405(d)(2); Mechanical Resources, Inc., B-241403, Jan. 30, 1991, 91-1 CPD ¶ 93. Failure to acknowledge an amendment may also be waived where the amendment results in less stringent obligations on the bidder, since acceptance of a bid premised on the more stringent requirements in the original solicitation would not prejudice any other competitor. Pro Alarm Co., Inc., 69 Comp. Gen. 727 (1990), 90-2 CPD ¶ 242.

We find that the questions and answers contained in this amendment either clarified existing requirements or minor inconsistencies in the specifications, or reduced the contractor's obligations. For instance, two of the answers cited by Tabcon advised that the door frames into which strike plates would be installed were wood. Tabcon contends these answers were significant because the costs of installing strike plates in wood or metal frames are substantially different. We have held, however, that specifications that provide approximate instructions, coupled with the opportunity to ascertain details of the work through a site visit, are adequate. KenCom, Inc., B-200871, Oct. 5, 1981, 81-2 CPD ¶ 275. As we noted above, the IFB provided general specifications and urged bidders to perform site surveys to discover conditions that might affect the costs of performance. Presumably, any bidder who visited the site, as did El Paso, would have discovered that the door frames involved in contract performance were wood. Consequently, these answers did nothing more than restate information already reasonably and readily available to bidders.

Another answer in the amendment responded to a question whether, for a house in which two locks were installed, the IFB required the contractor to provide four keys for each lock or four keys for the house, with the answer that there had to be four keys per house. Tabcon asserts that this answer is significant because it clarified the specifications. In our view, however, this answer at most simply reduced the obligation to provide keys (for bidders who might have been planning on eight keys). Consequently, El Paso's failure to acknowledge this change did not render the bid unacceptable. Pro Alarm Co., Inc., supra.

We have reviewed Tabcon's other objections and we agree with the agency's determination that the amendment was not material. The Army therefore acted properly in waiving El Paso's failure to acknowledge the amendment.

The protest is denied.


James F. Hinchman
General Counsel